

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Mailed: July 11, 2003

Paper No. 26
ejs

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Seaman Furniture Company, Inc.

Serial No. 75/698,113

Stephanie Furgang Adwar of Furgang & Adwar, L.L. P. for
Seaman Furniture Company, Inc.

Linda A. Powell, Trademark Examining Attorney, Law Office
106 (Mary I. Sparrow, Managing Attorney).

Before Seeherman, Hairston and Holtzman, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Seaman Furniture Company, Inc. has appealed from the
final refusal of the Trademark Examining Attorney to
register ASHLEY STUART as a mark for "retail store services

in the field of furniture and the like."¹ Although various issues and grounds for refusal were raised during the examination of this application, the refusal from which this appeal was taken is that the specimen of record fails to show use of the mark in connection with the identified services.

The appeal has been fully briefed. Although applicant had initially requested an oral hearing, this request was subsequently withdrawn.

Trademark Rule 2.56(a) provides, in part, that an application under section 1(a) of the Act, i.e., an application based on use in commerce, such as the application at issue herein, must include one specimen showing the mark as used on or in connection with the sale or advertising of the services in commerce. Rule 2.56(b)(2) further specifies that a "service mark specimen must show the mark as actually used in the sale or advertising of the services." Section 45 of the Trademark Act provides, in part, that a service mark is used in commerce "when it is used or displayed in the sale or

¹ Application Serial No. 75/698,113, filed May 5, 1999, based on asserted dates of first use and first use in commerce as of April 17, 1998.

advertising of services and the services are rendered in commerce..."

It is the Examining Attorney's position that applicant's specimen does not show use of the mark ASHLEY STUART in connection with the identified "retail store services in the field of furniture and the like," but, rather, it shows the term used as a trademark for the furniture itself. In further support of the Examining Attorney's position that ASHLEY STUART is a trademark for the goods, rather than a service mark for the retail store services, she has submitted a page taken from applicant's website, www.seamans.com, which states, under the heading "the Ashley Stuart COLLECTION":

Relax and enjoy the beauty of your surroundings and the comfort of this 91" plaid sofa from Seaman's own "Ashley Stuart Collection". A collection of furniture designed for today's casual lifestyle. By incorporating the use of soft fabrics, pattern combinations and extra soft seating, the result is a beautiful look that's easy to maintain and comfortable enough to relax in everyday. Navy, beige, and green patterns are available as special order colors.

Below this text is a listing of different furniture items, with their dimensions, and the price for a five-piece package.

Despite the language in the website, applicant asserts that it does not sell any furniture under the mark ASHLEY STUART. Applicant explains that ASHLEY STUART is used to identify its service of grouping furniture into "rooms," so that consumers may purchase the entire group as a decorated room, rather than having to choose individual pieces and do the decorating themselves.²

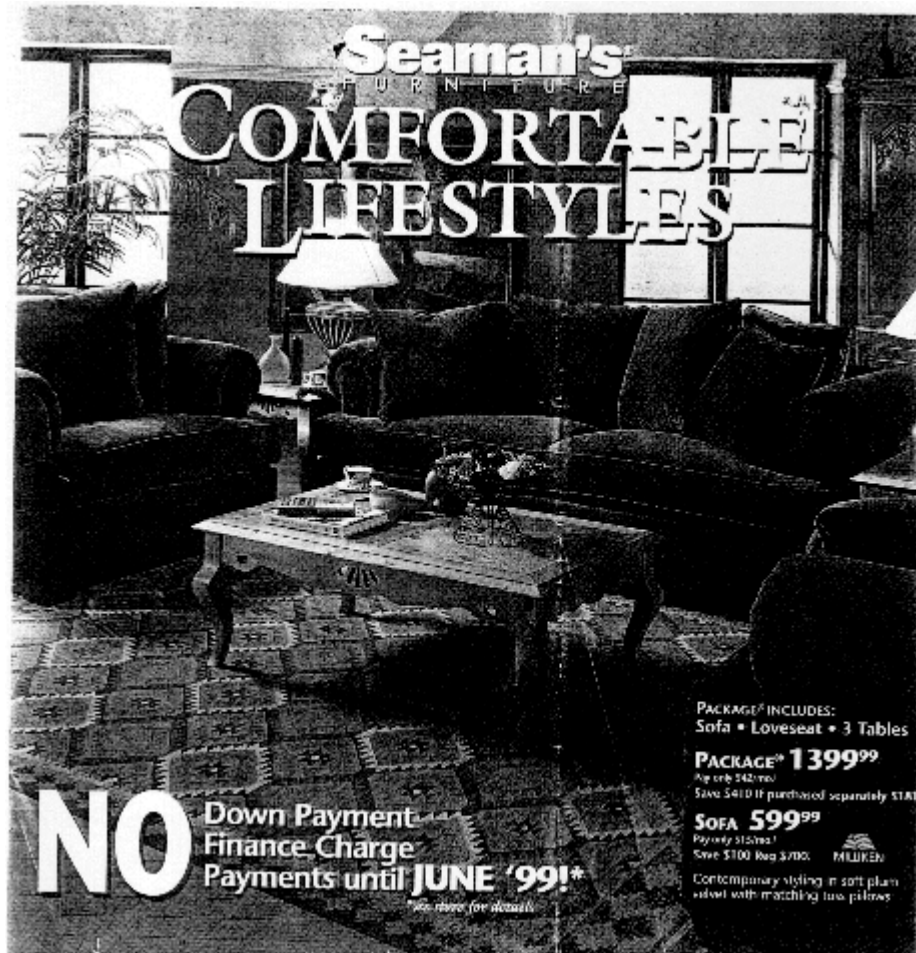
To be an acceptable specimen of use of the mark in the advertising of the identified services, there must be a direct association between the mark sought to be registered and the services specified in the application, and there must be sufficient reference to the services in the specimens to create this association. **In re Monograms America Inc.**, 51 USPQ2d 1317 (TTAB 1999). It is not enough that the term alleged to constitute the mark be used in advertising; there must also be a direct association

² In her brief, the Examining Attorney comments that the grouping of the furniture is "ancillary to the performance of the applicant's retail store services," brief, p. 4, and suggests that this would not be a service that is separate from retail store services. It is not clear what point the Examining Attorney is attempting to make. The issue herein is not whether applicant would be entitled to register its mark for grouping of furniture as a separate service. Applicant has applied to register its mark for retail furniture store services, and the Examining Attorney has acknowledged that the service of grouping furniture would be encompassed within retail store services. Therefore, if the specimens were to show that applicant uses its mark for grouping of furniture, this would constitute use of the mark for retail store services.

between the term and the services. **Peopleware Systems, Inc. v. Peopleware, Inc.**, 226 USPQ 320 (TTAB 1985). The mark must be used in such a manner that it would be readily perceived as identifying the source of such services. **In re Metrotech**, 33 USPQ2d 1049 (Com'r Pats. 1993).

The question, thus, is not whether applicant renders retail furniture store services, or, more particularly, the service of grouping furniture to form a decorated "room." The issue is whether applicant is using ASHLEY STUART as a mark to identify the source of these services.

The determination of whether applicant's specimen shows the mark ASHLEY STUART in connection with the sale or advertising of retail store services in the field of furniture and the like necessarily requires a consideration of the specimens. Applicant's specimen consists of an eight-page advertising brochure, which consists of two long sheets which have been folded in half, with one folded inside the other. The cover page, as shown below, bears the heading "Seaman's Furniture Comfortable Lifestyles."




The inside pages feature various items or rooms of furniture, and have headings on the pages of "Comfortably," "Comfortable Dining," "Casual," "Cushioned Comfort" and "Comfortable Choices."

The term ASHLEY STUART appears only on the last page, which is reproduced below. Specifically, it appears as part of the phrase "From Our ASHLEY STUART Collection" above a photograph of a bedroom suite, and it also appears in text next to that photograph, under the title "Lifestyles," as part of the phrase "'ASHLEY STUART'

Ser No. 75/698,113

LIFESTYLE BEDROOM, below which is the phrase "Natural finish on solid maple and maple veneers."

The text beside the photograph lists the prices of this bedroom, with the three-piece set, consisting of a headboard, footboard and rail set, selling for \$399.99; the five-piece set, which also includes a dresser and mirror, selling for \$799.99; and the six-piece set, which includes a drawer chest as well, selling for \$999.99.



LIFESTYLES

"ASHLEY STUART" LIFESTYLE BEDROOM
Natural finish on solid maple and maple veneers

Sale 399⁹⁹
Pay only \$15/mo.
3-PC QUEEN BED*
Save \$90 Reg. \$490.
• Headboard
• Footboard
• Rail Set

Sale 799⁹⁹
Pay only \$24/mo.
5-PC PACKAGE*
Save \$100 Reg. \$900.
• Queen Bed*
• Dresser
• Mirror

Sale 999⁹⁹
Pay only \$33/mo.
6-PC SUPER PACKAGE*
Save \$200 Reg. \$1,200.
• Queen Bed*
• Dresser & Mirror
• Drawer Chest

Apply today for our new custom credit! See store for details.
MOST MAJOR CREDIT CARDS ALSO ACCEPTED

43 LOCATIONS SERVING NEW YORK, NEW JERSEY, CONNECTICUT, PHILADELPHIA & NORTHEAST OHIO

TO REAP THE STURGE LOCATIONS NEAREST YOU, CALL 1-800-80 SEAMANS
Or visit us first at www.seamans.com

Seaman's FURNITURE

From Our ASTLEY STUART Collection

Sale 1099⁹⁹
Pay only \$45/mo.
5-PC PACKAGE*
Save \$410
If purchased separately \$1510.
Features casual contemporary styling crowned in soft, natural paint detailed with wood burn free.

Sale 799⁹⁹
Pay only \$24/mo.
5-PC CONTEMPORARY DINING ROOM
Save \$100 Reg. \$900.
Set includes 42" x 66" table (seats for 20) w/ 10" top, plus 4 casual backless chairs. Natural finish solid maple and maple veneers. Matching 36" Lighted China Also Sale. Priced at \$999.99.

75698113

100-05-1809

As used in the specimen, ASHLEY STUART clearly gives the impression that it is a trademark for furniture, not for retail furniture store services. For example, the use of the phrase "Natural finish on solid maple and maple veneers" below the phrase "'ASHLEY STUART' LIFESTYLE BEDROOM" indicates that the ASHLEY STUART bedroom furniture is made of solid maple and maple veneers. The phrase "From Our ASHLEY STUART Collection" above the photograph of the bedroom indicates that this is ASHLEY STUART brand bedroom furniture, and this impression is supported by the pricing information appearing immediately next to the photograph.

It does not matter that applicant may not, in fact, sell furniture bearing the trademark ASHLEY STUART. The determination of whether there is a direct connection between the mark and the services for which registration is sought is not made by default, i.e., if ASHLEY STUART is not a trademark for furniture, then it must be a service mark for retail furniture store services. Consumers viewing the mark as used in the specimen of record would clearly perceive ASHLEY STUART (or ASHLEY STUART COLLECTION) as identifying the source of the furniture, rather than of the retail furniture store services. This perception is reinforced by applicant's website material,

Ser No. 75/698,113

which is the only other advertising material of applicant's which is of record.

Accordingly, we find that applicant has failed to submit specimens showing use of ASHLEY STUART as a mark for the identified "retail store services in the field of furniture and the like.

Decision: The refusal of registration is affirmed.